IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6948 OF 2007

Vidhichand Sharma .. Petitioner
Versus
Shekhar N. Shetty & Anr. .. Respondents

Mr.M.P.Patel for petitioner
Mr.Vivek Kantawala for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th November 2007

P.C.

. Considering the fact that the petitioner original defendant wishes to add para 7(a) in the written statement which neither changes the nature of his defence nor takes the original plaintiffs by surprise, then, there was no warrant in rejecting the application for amendment. In all such cases, request of the defendant is that suit must be dismissed. That it must be dismissed on some or the other ground

and by raising some pleas does not mean that the defendant is precluded from doing so. Allowing addition of para 7(a) to the written statement would cause no prejudice to the parties. It is clarified that the merits of the amendment have not been gone into and merely because para 7(a) is allowed to be incorporated does not mean that the Court has accepted the case set up therein. Ultimately it is for the defendants to establish the case set up in para 7(a), which he can, either by leading evidence or cross examining plaintiff's witness.

2. Petition is allowed. Amendment to be carried out within a period of two weeks from today. Petitioners to pay costs quantified at Rs.2000/-. Costs condition precedent.

(S.C.Dharmadhikari, J)